

**FESTSCHRIFT FOR PROFESSOR RICHARD O. BROOKS  
FOUNDING DIRECTOR OF THE ENVIRONMENTAL LAW  
CENTER AT VERMONT LAW SCHOOL  
ON THE OCCASION OF THE CENTER'S 40<sup>TH</sup> ANNIVERSARY**

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*David K. Mears\**

In the fall 2017, at a meeting of the Vermont Law School environmental faculty, the following conversation took place:

Me: We are coming up on the celebration of the Environmental Law Center's 40<sup>th</sup> Anniversary next year, any suggestions?

Pat Parenteau: "We should honor Dick Brooks as the Center's founder before all of us geezers who remember him retire."

Environmental Faculty: [Laughter], "Speak for yourself," [Heads nodding], "But . . . good idea."

Pat Parenteau: "Who's up for doing a Festschrift?"

Environmental Faculty: [Confused looks], "A fest-what?"

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In the off-chance that any readers are as bewildered this term as were Vermont Law School's finest minds, the dictionary defines "Festschrift" as a volume of writings presented as a tribute or memorial, especially to a scholar. The term has its origins in German: "Fest" translating into "celebration;" and "Schrift" meaning "writing."<sup>1</sup> A Festschrift to honor Professor Richard Brooks is particularly appropriate. He was indeed the

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<sup>1</sup> *Festschrift*, MERRIAM WEBSTER, <https://www.merriam-webster.com/dictionary/Festschrift> (last visited Aug. 21, 2019).

founding director of the Environmental Law Center in 1978 and launched what has become a center of learning, advocacy, and leadership known across the world for the work of its faculty, students and graduates.<sup>2</sup> In addition, Professor Brooks is a true seeker of knowledge, a scholar and teacher who provided the intellectual foundation for the Center and whose contributions continue to challenge and inspire. He has produced an impressive set of articles, book chapters, books, and other papers<sup>3</sup> over a period that spans nearly five decades including a significant amount of work during the time he was the Environmental Law Center Director – a level of productivity that anyone who has tried to teach, administer a law school program, and write should find humbling – I certainly do.

I have had the honor of knowing Professor Brooks for nearly thirty years, since I first set foot on the Vermont Law School campus as a student in 1988. During those three years, he loomed as an especially large presence, both as a professor and as the Environmental Law Center's Director. He demanded that we engage in the work of understanding environmental law with the goal of using that understanding to drive change. Professor Brooks was not interested in a recitation of facts, or a memorized version of the rules and statutes, but in having his students dive deeper. He was impatient with the mere regurgitation of our reading materials. At the same time, he listened deeply and encouraged us when we worked to find meaning, even when we struggled.

Since graduating, I benefited from knowing Professor Brooks as a mentor while I served as a member of the Vermont Law School faculty and served in various roles including in his old position as the director of the Environmental Law Center. While Vermont Law School engages in an effort to imagine how we can best educate the next generation of environmental advocates, leaders, and problem-solvers, a review of Professor Brooks' writings provides a strong foundation for our work.

Readers of Professor Brooks' work will find his distinctive voice compelling. His colleagues' essays in this Festschrift echo and amplify his consistent reference to a set of foundational themes such as the need to consider the philosophical and ethical underpinnings of environmental law,

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<sup>2</sup> Environmental Law Center, Centers and Programs, Vermont Law School, <https://www.vermontlaw.edu/academics/centers-and-programs/environmental-law-center> (Last visited Aug. 21, 2018).

<sup>3</sup> Richard Brooks, Person, Directory, Vermont Law School, <https://www.vermontlaw.edu/directory/person/brooks-richard> (last visited Aug. 21, 2018).

and the need to imagine legal solutions that recognize the deep connections and dependencies among the human and natural worlds.

When reviewing Professor Brooks' writings, I was reminded of a Mark Twain quote:

There is no such thing as a new idea. It is impossible. We simply take a lot of old ideas and put them into a sort of mental kaleidoscope. We give them a turn and they make new and curious combinations. We keep on turning and making new combinations indefinitely; but they are the same old pieces of colored glass that have been in use through all the ages.<sup>4</sup>

Professor Brooks took this perspective seriously and required that his students understand the historical context and philosophical framework for environmental law. As a student, I would groan inwardly when Professor Brooks would reach back to the Greek philosophers when discussing statutes like the Clean Air Act. I wanted to know how to make sense of practical questions such as the Act's New Source Review provisions and the difference between pre-construction permits and operating permits for major stationary sources. I was less interested in the question of whether the human pursuit of knowledge should be through a spiritual and creative inquiry dedicated to the pursuit of higher, pure ideals (Plato), or in a logical analysis of the material world through a pursuit of facts (Aristotle).<sup>5</sup> Nearly thirty years later, and in an era when the fundamental premise of national environmental laws, including the Clean Air Act, is being called into question, I now have a different perspective than I did as a law student. During a time of global climate disruption and profound risks to our current social and civilizational fabric, keeping the larger questions in mind is not a luxury for intellectuals but a necessity as we build a movement for social, legal and political change that is up to the task before us. Drawing upon "old ideas . . . to make new and curious combinations,"<sup>6</sup> is a strategy that Professor Brooks models through his work and understanding the history and evolution of those ideas may allow us to stand on the shoulders of those who have gone before.

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<sup>4</sup> Mark Twain, *Mark Twain's Own Autobiography: The Chapters from the North American Review*, 255 (Michael J. Kiskis, 2d ed. 1924).

<sup>5</sup> To read further about this timeless debate, see Arthur Herman, *The Cave and the Light: Plato Versus Aristotle and the Struggle for the Soul of Western Civilization*, (2013).

<sup>6</sup> Twain, *supra* note 4.

In that vein, I recently found myself reminded of the value of understanding the evolution of modern thinking when reading a biography of scientist Alexander von Humboldt (1769 – 1859).<sup>7</sup> Humboldt's work reinforces two of Professor Brooks' central themes: both the opportunity and need to look to past thought leaders for inspiration and guidance; and, the obligation to understand environmental law in the context of the connections between human and ecological systems. In her book, "The Invention of Nature," author Andrea Wulf does not just profile Humboldt as an "ecologist" ahead of his time but also discusses at length his impact on some of the greatest thinkers on the topic of the relation of humans to the natural world. Wulf carefully documents the ways in which Humboldt's view of nature as a complex, interconnected web that we humans disrupt at our own risk influenced no less than Charles Darwin, Henry David Thoreau, George Perkins Marsh, and John Muir.

Not coincidentally, Professor Brooks' works are peppered with references to these same intellectual giants; great thinkers whose works have deeply informed modern environmental policy. A theme of Professor Brooks' writing and teaching is that effective environmental policy is based upon ecological thinking, considering the relationships within the complex web of life including humans and human systems, not as an afterthought, but as a central focus of inquiry. He asks simply that we consider both the natural and social implications of our system of environmental laws and draws upon the work of scientists, philosophers, and other scholars to illustrate this fundamental principle.

Three of Professor Brooks' works illustrate his steadfast commitment to this theme. In an article published the same year that I graduated from Vermont Law School, Professor Brooks undertook to define "A New Agenda for Modern Environmental Law."<sup>8</sup> In this article, Professor Brooks states that:

environmental law should be guided by modern ecological perspectives which can offer a modern reinterpretation of a series of traditional ethical ideals embodied in our tradition. Ideals such as holding the environment in trust for future generations, respecting non-human nature, making secure the citizens' health and lives (especially vulnerable citizens) protecting nature's beauty, community sharing of

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<sup>7</sup> Andrea Wulf, *The Invention of Nature: Alexander Von Humboldt's New World*, (2015).

<sup>8</sup> Richard Brooks, *A New Agenda for Modern Environmental Law*, 6 J. ENVTL. L. & LITIG. 1 (1991).

renewable resources, and encouragement of ecologically sensitive lifestyles should be the starting point for reformulating environmental policy and law. The importance of these ideals is that they carry a rich tradition, and consequently are enconced, more or less, in American culture.<sup>9</sup>

Consistent with this theme, Professor Brooks suggests the establishment of a “natural law philosophy” as foundational to a system of environmental laws.<sup>10</sup> He recommends that we avoid overreliance on utilitarian “engineering objectives,” and instead that we build environmental laws based on ethical ideals, ideals that reflect shared cultural values and which are informed by ecological science.<sup>11</sup> Similarly, Professor Brooks promotes greater consideration of community values when constructing state and federal statutes,<sup>12</sup> and the teaching of environmental justice to ensure that disproportionate impacts of pollution and environmental degradation do not fall upon people of color or those who are economically disadvantaged.<sup>13</sup> Each recommendation in this rich and provocative article demonstrates Professor Brooks’ dedication to a careful examination of the relationships among humans and the natural world, within the context of our history and culture, as critical to building a coherent system of environmental laws.

A second of Professor Brooks’ works that is notable for his commitment to the theme that we cannot separate humans from nature is “Speaking (Vermont) Truth to (Washington) Power.” This work is in the form of a lecture he delivered in the Spring 2005 at the Norman Williams Distinguished Lecture in Land Use Planning and the Law at Vermont Law School reproduced in the Vermont Law Review.<sup>14</sup> Professor Brooks states:

The respect due both people and nature comes not only from seeing the value of both, but also understanding how both contribute to the common good which links us to one another. Law can either buttress the “lock up” of people and nature in a futile effort to protect us, or it

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<sup>9</sup> *Id.* at 15 (internal quotations omitted).

<sup>10</sup> *Id.* at 13.

<sup>11</sup> *Id.* at 14.

<sup>12</sup> *Id.* at 20.

<sup>13</sup> *Id.* at 26.

<sup>14</sup> Richard Brooks, *Speaking (Vermont) Truth to (Washington) Power*, 29 VT. L. REV. 877–893 (2005).

can help to break down those walls and integrate both persons and nature within the community.<sup>15</sup>

Professor Brooks then draws upon Vermont's history of community and a strong connection to the landscape, the Vermont Constitution, and the ground-breaking state land use law known as Act 250 to illustrate the ways in which Vermont has established truths that the federal government should consider. He then cites to examples of Vermont Law School graduates who have gone on to play a major role in driving change at both the state and federal level and concludes that the answer to the future of the environmental movement:

lies in the fact that Vermont speaks the truth to Washington's power. That truth is the law and policy of inclusion of both people and nature in sustainable communities. Vermont illustrates that inclusion in its way of life. It works to push federal policy to fully recognize both people and nature. It offers a unique legal rationale for inclusion. And it promises to offer future services to the community-based ecosystem regimes.<sup>16</sup>

Professor Brooks then concludes by encouraging Vermont Law School students and faculty to engage in the work of using the legal system to drive effective environmental policy, in Vermont and beyond. His inspirational words embody for me and, I suspect, for many other Vermont Law School graduates, our shared hope that our education at a small law school in a town without a spotlight would equip us with the insights and tools necessary to address the myriad and complex environmental challenges presented by the modern world.

A third work represents Professor Brooks' commitment to "walking the walk," in the form of a paper sharing his reflections with state policy makers, planners and lawyers on the opportunities to update Vermont's famous 1970 land use law, Act 250,<sup>17</sup> as it nears its fiftieth anniversary. This paper, entitled "Conserving and Restoring Vermont's Landscape: Reflections on the Goals Of Vermont's Act 250," provides his reflections on the implementation of the law, which he finds lacking, and a set of admonishments to commit to more fully achieving a shared understanding and commitment to protecting Vermont's natural and human communities

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<sup>15</sup> *Id.* at 879.

<sup>16</sup> *Id.* at 893.

<sup>17</sup> 10 V.S.A. § 6001-6093(2018).

as an interrelated whole. The motivation for his paper is an ongoing assessment of Act 250 by the Vermont General Assembly which, in 2017, formed “The Commission on Act 250: The Next 50 Years” which held hearings around the state and developed proposed improvements to the law currently under consideration by Vermont legislators.<sup>18</sup>

Professor Brooks’ paper begins by framing a central premise at the heart of any discussion regarding the Act 250’s goals, that Vermont’s people and the land are interconnected and that the law provides a pathway to protect that vital relationship:

Everyone agrees that Vermont is a beautiful state – green mountains, river valleys, forests and lakes, shaped in the past by geological forces, shaped in the present by its frigid winters, thawed by its emerald green summer and decorated by its brilliant autumn. But Vermont is also shaped by its people; their farms, compact villages, and urban areas; its onrushing “soft energy” program; its mountains are sculpted by visiting skiers and energy entrepreneurs. Less obvious but no less influential, to quote a famous Frenchman, Vermont is shaped by “the spirit of [its] laws.”<sup>19</sup>

Professor Brooks then proceeds to carefully examine the original goals and mechanisms of Act 250, harkening back to his treatise, “Towards Community Sustainability: Vermont’s Act 250,” published twenty years ago.<sup>20</sup> He concludes that the law has not met the expectations of the original drafters and offers a pointed critique along with a path for legislators and others as they examine the future of this important law.

Professor Brooks questions whether Vermont’s “pastoral life is whirled and past away,” such that an original goal of Act 250, to protect the landscape as a working environment in which humans interact with the land in a sustainable fashion, is no longer relevant.<sup>21</sup> In essence, he asks if our shared values have changed such that we need to rethink this fundamental

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<sup>18</sup> <https://legislature.vermont.gov/committee/detail/2018/333/Reports>

<sup>19</sup> Richard O. Brooks, *Conserving and Restoring Vermont’s Landscape: Reflection On the Goals of Vermont’s Act 250*, [https://www.vermontlaw.edu/sites/default/files/2018-05/Draft\\_Act250\\_Memo.pdf](https://www.vermontlaw.edu/sites/default/files/2018-05/Draft_Act250_Memo.pdf) [hereinafter Act 250 Paper] (referencing C. Montesquieu’s “The Spirit of the Laws” (1748)).

<sup>20</sup> Richard O. Brooks & K. Leonard, et al., *Toward Community Sustainability: Vermont’s Act 250* (Vol. I 1996); Richard O. Brooks & K. Leonard, et al., *Toward Community Sustainability: Vermont’s Act 250* (Vol. II 1997).

<sup>21</sup> Act 250 Paper, *supra* note 19, at 9.

goal underlying the Act. After careful analysis, Professor Brooks' conclusion is not that Vermont abandon this goal, but that Vermont officials should pursue a more "complex pastoralism." He suggests that protecting Vermont's working landscape requires a recognition that a vision of sustainable communities in Vermont must go beyond protecting a set of natural features (e.g. air, water, soil, wildlife, and scenic beauty) as independent of each other, or of the human communities so interdependent upon these features. Instead, we should, he argues, recognize Vermont as

rural, with a modest low density population, clustered in small towns surrounded by open spaces, retaining to some extent its natural resource economy of farms, forests, nature based recreation pursuits, much of its land held in large lot, or commons or public ownership, and highly visible natural landscape features, (mountains, lakes, forests, rivers, valleys, farms) all contributing to its pervasive scenic beauty attracting tourists and second home development.<sup>22</sup>

He concludes that we need to explicitly recognize, in Act 250, the importance of treating each feature of the Vermont landscape as part of an interrelated whole.

From this premise, Professor Brooks suggests six areas where Act 250 falls short and could be improved by a more explicit recognition of the broader goals covered by this "complex pastoral vision" and greater engagement at the community level where citizens can participate more easily.<sup>23</sup> He notes that the law currently omits major landscape elements such as mountains and downtowns and suggests that reorganizing the criteria to develop a more harmonized approach would strengthen the law.<sup>24</sup> Professor Brooks also describes the lack of effective and comprehensive municipal and state planning, and the failure of those plans and other non-regulatory parts of Vermont's land use law to align with the regulatory tools such as permitting.<sup>25</sup> Finally, he criticizes the law's current state of unfriendliness to citizen participation, particularly the ways in which the law limits citizens to engaging on a project-by-project level instead of being able to see the landscape as a whole.<sup>26</sup>

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<sup>22</sup> *Id.* at 8.

<sup>23</sup> *Id.* at 6–7.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*



Consistent with his writing across the past five decades, Professor Brooks examines Act 250 through the lens of history, with an explicit recognition of the philosophical and ethical underpinnings of the law. His analysis is guided by the fundamental notion that we cannot address environmental issues in a manner that separates nature from humans. In this way, he reinforces this fundamental premise of all three of the works I have reviewed in this essay, and that he has repeated throughout his career whether in the classroom or through his writing and speaking.

It is an honor to be able to participate in a celebration of his writing and I encourage readers to enjoy not just the essays in this Festschrift, but to peruse Professor Brooks' own works as well – you will not be disappointed.